

I suspect--and I hope--that you are receiving a multitude of form letters in opposition to the proposed Broadcast Flag.

I write to raise an additional concern: in requiring a strong technology in favor of the copyrights of the MPAA and other broadcast content owners, the FCC would be making policy in an area outside its sphere of competence and its Congressionally delegated powers. The mandate of the FCC is to "make available . . . to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service". 47 U.S.C. s. 151. It is not to uphold or modify the law of copyright.

The proposed Broadcast Flag does nothing to further the more-rapid adoption of DTV nor otherwise encourage the development of any communications service. There is no indication--and indeed it defies credibility to suggest--that content providers will realistically be deterred from providing digital content by the threat of piracy, to the detriment of the movement towards digital television.

Whether the evils of piracy outweigh the evils of curtailing fair use and, in the words of Justice Ginsburg, "alter[ing] the traditional contours of copyright protection", Eldred v. Ashcroft, 123 S. Ct. 769 (2003), is a difficult policy question. It is also a policy question that only tangentially bears on the availability of better communications services, and profoundly bears on the First Amendment and the law of copyright in ways that have nothing to do with the FCC.

The proposed Broadcast Flag is bad policy; but even more importantly, it is policy that the FCC should not be making. I urge you to reject any proposal to mandate a Broadcast Flag or other digital rights management technology as part of a digital television standard; any decision having so profound and troubling an impact on the rights of consumers, and so small an impact on the FCC's mission, should be made by Congress, or not made at all.